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SUBJECT: VENEZUELAN TRIAL PROCEDURES AND POLITICAL JUSTICE

Classified By: A/DCM ABELARDO A. ARIAS FOR REASONS 1.5 (d)

Summary

1. (U) Court cases against various opponents of President Hugo Chavez are at different stages in the judicial process. The case of Baruta Mayor Henrique Capriles, though he has been in custody for more than two months, is in its initial stages, while the case of National Guard Gen. Carlos Alfonzo Martinez is at trial. This cable gives a basic overview of Venezuela's trial system, highlighted with the status of several political cases now before the courts. End Summary.

Adversarial System

2. (U) The Venezuelan penal system changed radically in 1998 when the Organic Penal Procedures Code (COPP) came into effect. It changed Venezuela's justice system from an accusatorial to an adversarial system. This required the creation of a new system of public prosecutors and changed the role of the judge as well. Under the COPP, the judge handles procedural issues and, alone or with the participation of lay judges, decides the case. Trials are public, and defendants are protected by the presumption of innocence and the right to be free while on trial, under most circumstances.

Prosecutors

3. (C) In Venezuela's justice system prosecutors begin investigations primarily based on complaints submitted by citizens. For complaints submitted during regular hours, the prosecutor to handle the case is chosen by lot. Complaints entered after hours are taken by the duty prosecutor (The lottery system was implemented with the COPP to avoid venue shopping and is similarly used in the assignment of cases to control and trial judges.) According to Juan Martin Echeverria, defense lawyer in the Capriles and SUMATE cases, there is a group of seven prosecutors given all the political cases in which the GoV had an interest, in violation of the case distribution system which is supposed to operate in the prosecutors office, as in the courts. They included Danilo Anderson, prosecutor in the Capriles case, Luisa Ortega, prosecutor in the SUMATE case, and Jose Benigno Rojas, responsible for the accusation of bribery in the Tachira 9 case. Martin argued that these prosecutors act under strict orders from Attorney General Isaias Rodriguez, and not with the independence required by the COPP to search for evidence of innocence as well as guilt, and make a good faith effort to uncover the truth.

Imputado

4. (U) The first stage in a trial in Venezuela is the public prosecutor's investigation of the alleged crime. During the preliminary investigation of a crime, the prosecutor's office acts without judicial supervision. When the prosecutor decides to begin a formal investigation of criminal responsibility against an individual, that individual is advised that he or she is the subject of an investigation (imputado). At this time, the prosecutor may request that a judge order the suspect be detained if all three of the following conditions are met: 1) there is sufficient evidence that a serious crime has been committed; 2) there is sufficient evidence that the suspect may have committed the crime; 3) there is sufficient reason to believe the suspect may flee, or try to interfere with the investigation. The prosecutor in Baruta Mayor Henrique Capriles' case has successfully argued these points to keep him in custody since

May 11.

----- Pre-trial Detention -----

15. (C) The COPP states that pre-trial detention should be an exception, but one half of all Venezuelan prisoners have not yet been convicted of any crime. According to Caracas Appeals Court Judge Cesar Sanchez, there is resistance among many control judges to accept this aspect of the COPP (NOTE: Control judges oversee procedures in cases prior to the trial itself. End note.) Sanchez told PolOff April 26 that many control judges ignore the rules in the COPP, and their decisions must be contested in Appeals Court to be overturned.

----- Assignment of Cases -----

16. (C) The COPP states that when the prosecutor's office brings a case forth, the selection of the control judge is by lot. If the prosecutor brings his case forth between 7 p.m. and 7 a.m., however, the case goes to the control judge on duty. Important political cases such as the case, against Baruta Mayor Capriles and the case of nine opposition leaders in Tachira state, being tried for civil rebellion for alleged deeds in April 2002, have been brought to the courts after regular hours, according to Appeals Court Judge Jesus Ollarves, whose court twice ruled the practice of after hours assignment was improper. (Note: The Supreme Court overruled Ollarves' court on both occasions.) Ollarves told PolOff June 21, that prosecutors have taken advantage of this system to make sure high profile political cases go to judges who are allies of the GOV.

----- Long Detentions -----

17. (U) Once a prosecutor has opened an investigation against an individual he has 45 days, if the suspect is jailed, to decide whether to make a formal accusation before a judge (if the suspect is not jailed the period is ten months). Once the formal accusation is filed with the court, a trial judge is selected in the same manner as the control judge. If the suspect is under detention, the judge must have a hearing to determine if the detention should continue. This is the type of hearing that was scheduled for Capriles July 26, though it was canceled after an Appeals Court sent the case back to a new control judge.

18. (U) Suspects detained throughout their trial can be in jail for years due to the inefficiency of the judicial system. Hearings are frequently suspended because witnesses or lawyers do not come, and prisoners frequently miss hearings because the system of transportation for prisoners is inefficient and corrupt. National Guard Gen. Carlos Alfonzo Martinez was ordered from prison to house arrest July 20 after being in custody since December, 2002. His trial began on July 19. The Tachira 9 have been in prison awaiting the beginning of their trial for civil rebellion for over a year. Their trial began July 26.

----- Public Trials -----

19. (U) The COPP guarantees suspects the right to a public trial, except when a public trial: 1) would violate the right to privacy of one of the actors; 2) would endanger national security or public morals; 3) would reveal commercial or industrial secrets; 4) when a minor is testifying. The judge in the case of Gen. Alfonzo closed the trial to the press and public on July 19, for reasons of national security. The defense unsuccessfully objected that all the evidence had already been discussed publicly in a Supreme Court hearing.

----- Judges and Escabinos -----

10. (U) Trial judges in Venezuela render decisions as well as ensure proper trial procedures are followed. In cases with a maximum penalty of less than four years, the judge decides on guilt or innocence, and sentences the defendant. In cases with a maximum sentence of more than four years, the judge presides over a mixed court, consisting of himself and two lay judges (escabinos). The two escabinos have the same right as the judge to question witnesses. Decisions can be made by a two-thirds majority. Delays in identifying escabinos cause subsequent delays in trials. The accused can request a trial without them after four failed attempts to form a mixed court. An accusation of bribery against a defense lawyer and the escabinos in the trial of the Tachira 9 caused the latest delay in the case.

Comment

11. (C) The Venezuelan judicial system is a case study on the limits of progressive law. The previous division of the justice system between the AD and COPEI provided for a balance of power, but did not strengthen the idea of judicial independence. The Venezuelan Constitution and the COPP take very progressive views on human rights, and the rights of the accused. In practice, however, respect for these rights falls short. Chavez and his loyalists control the prosecutors office and much of the court system. The failure to insulate prosecutors and judges from outside pressure and the excessive authority exercised by a politically partial Supreme Court over the entire court system, have made it more possible for criminal persecution in Venezuela to be the continuation of politics by other means.
Shapiro

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